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An Italian Jurist on the Conditional Sentence.—In *Il Progresso del Diritto Criminale* for Nov.-Dec., 1914, Baldassarre Cocurullo has an article on *Questioni sulla condanna condizionale*. He asks several questions:

(1) Whether a conditional sentence can be given to an accused, who only appears before the court by counsel?

This question is answered in the affirmative, upon a construction of the CPP, which only limits the court's powers in that regard to those who have *appeared*. It seems to us, however, that this contention must be correct; yet the court, that conditional sentence being discretionary, should be very loath to grant it to a defendant guilty of *contumacia* or *assenza volontaria*.

(2) Whether a conditional sentence can be given upon rehabilitation or pardon?

There was a doubt as to this under the old code, but the new code (Arts. 423, 426) removes the doubt providing that the concession can be made but once whether rehabilitation intervenes or not and that it can not be granted to any one, unless there is no condemnation of record against him.

(3) Whether a conditional sentence must be accompanied by the minimum penalty?

Although there have been arguments made in favor of an affirmative answer, it seems clear that there is no connection between the ideas. The gravity of the offense determines one, and the possibility of the delinquent's social amelioration the other. Judge Cocurullo writes: "It cannot be doubted that the minimum penalty may be inflicted without suspension and, vice versa, that a relatively heavy punishment may be given and suspended." J. L.

Penal Legislation in Colonies.—*Il Progresso del Diritto Criminale* for Nov.-Dec., 1914, contains an article, by Alimena, on *La legislazione penale della colonie*. Although Alimena uses the word colony to include, Asian, Polynesian and African colonies, and although the attention is particularly drawn to the semi-civilized countries, its opening paragraphs we will quote at length because of their remarkable applicability to legislation in America, a new country.

"In a work of my youth and in a publication of my maturity, I have attempted to give a theory of the phenomenon of legislation and tried to show that human laws have a juridical, social and natural history.

"Although, therefore, a law, taken by itself can seem and be the result of a single event or of an individual or collective will, still all the laws taken in their complex interdevelopment, are the product of a law superior and extrinsic to us; they are the result of necessity.

"We cannot repeat in this essay all that we have given in detail elsewhere. But we can summarize it in saying that we have spoken of legislative statics and legislative dynamics. By the former, the legislator photographs the conditions of the juridical consciousness of a people in a given moment. Through the latter, the juridical consciousness of a people strains to work a higher type of life and greets ideality. In the former alone, there is no progress, only in the latter is there found a law without basis in reality; and the genius of the legislator is shown in the harmonic co-ordination of the two divisions.

"This clear and tangible purpose appears a *fortiori* in colonies, where two civilizations come into contact.

"Of course colonization may be destructive and substitutive, but it also

may respect the national type. And, in either case, it must be admitted, all colonies tend towards greater freedom, even to the greatest complete independence.

"Now, to give a simple and direct solution. We must conclude that colonial legislation must permit the development of the spirit of a people, destined to become sovereign, but only within the limits fixed by the requirement of public order and *bonos mores*; that is, as it is said, up to the point where it comes in opposition to the other civilization.

"And within such limits, the juridical material, whose development is entitled to respect, is strong and virile in relation with the strength of the colonial race, and with its religious convictions, and the maturity of its civilization."

Their principle of this summary should be applied and has been largely applied, in America in forcing foreign laws and institutions of our races upon immigrants from another, but it has rarely been more accurately and concisely stated; and we have thus quoted it at length in our firm belief that a categorical recognition of a principle, no matter how generally applied in practice, is necessary not only as a logical training, but also in order to avoid practical mistakes.

Alimena takes some specific crimes, slavery and piracy (generally committed by others than the colonists), anthropophagy (rapidly disappearing because cannibals are unfitted for colonial life); infanticide and abortion (these, too, disappearing in the original form); suicide (which is a crime only by English law, not even in countries of close kindred to it, the United States [generally] or in Scotland); polygamy and offenses against decency.

From the point of view of the old countries: England has codes for different colonies. But it may be noted that Uganda is governed "so far as circumstances permit" by the Indian Code. French law follows the flag. The Germans impose their laws on colonists, with special enactment of a German type, for colored races. Spanish law controlled Spanish colonial possessions. Portugal followed the Spanish example, except in Mozambique, which, since 1812 has a code of procedure. Belgium and Holland have no special laws, but adapt their own codes. As to Denmark, Iceland has its own code, very similar to the Danish; Greenland and the Antilles are governed by the law of the mother country. Russian colonies are subject to Russian law, except Finland, although the Siberian tribes are governed by their own customs and the exiles have special regulations. Hawaii preserved its law of 1850, but the Spanish law was abolished in the Philippines in 1910 by G. O. 59.

The question of laws for civilized colonies, that is coordinately civilized with the mother country, is easy—a new code can be made. But where there are two civilizations, insurmountable difficulties at once arise, for the peoples cannot be made one, save by the effluxion of ages, but remain as Tacitus said "*ignoti inter, diversis, manipolis, sine rectore, sine affectibus mutuis, quasi ex alio genere mortaliū in unum collecti.*" The question of the solution of these difficulties does not include the juridical government of such places, as the Chinese settlements, Turkish "capitalizations," or lands temporarily occupied and permanent in another have to be formed. Racial prejudices have to be accepted and laws made to meet the facts as elsewhere. Whether the legislator understands a fact or not, he must give it recognition.

England has given Egypt mixed courts, with appropriate codes. This is the second stage, the first being that of military justice.

In Eretria, the Italian law governs Italians (assimilated) natives. For foreigners (unassimilated natives), foreign law, the Musselman code, the Fettia-Nagest and the Fettia-Mogareb, together with other traditions and customs control "in so far as is compatible with the spirit of Italian legislation and civilization." This is a further step towards the third stage, than is shown by Egypt. In this last or third stage, there is but one system and the racial differences have sunk to the grade of class distinctions. The colony is then a homogeneity, even if a heterogeneous one.

It is interesting to note a trace of the old Lombard laws, of Rotharis, Luitgold and Pepin, in the Eretrian law of today, for Article XII provides that in a suit between Italian subjects and others, "the Italian law shall prevail, when more favorable to either Italian citizen or foreigner."

Somali-land follows the same system, but has not reached the same stage of development. The native can renounce his law in order to take advantage of the Italian. Sentences can be imposed upon whole villages, thus recognizing the survival of collective punishment.

The Italian Code is applied in Libia, with modification, but this law does not show the existence of the third stage of colonial legislation, but marks the beginning of the second.

In conclusion, Alimena believes in individualized, even elastic penalties, *propter peccatum non re peccatur*. He disbelieves in the institution of capital punishments in lands where they have been unknown. He thinks that the system to be adopted is a gradual Italianization of local customs, and with especial regard to the criminal side of law, for it develops quicker than the civil.

J. L.

Embezzlement and Loss of Franchise in Italy.—*Il Progresso del Diritto Criminale*, in the May and June number of the year 1914, contains two articles, the first entitled "Elettorato ed Elegibilita," and the second by Ubaldo Pergola—"I vecchi e i nuovi peculatori di fronte alla vigente legge elettorale politica."

The first reviews the decision of the Supreme Court holding that a man named Nasi, who had been found guilty and condemned under the code of 1895, could not be deprived of his right to vote under the provisions of the new law, which added the loss of franchise (temporary or permanent, as the case might be) to the other penalty for the crime.

Ubaldo Pergola takes up this decision in detail and finds nothing which can justify the decision of the court. It is thought that the court was influenced by popular feeling and the immediate justice of the case. So, criticizing the decision, Pergola takes up several interesting arguments, upon which the court relied, in coming to the decision which it handed down.

The question is the complicated one of inflicting the penalty under a new law for a crime committed under the old. Pergola would solve it simply, however, by basing his answer not on the retroactivity or non-retroactivity of the new statute, but by the ruling of the statute itself, which provides that condemnation for the crime of *peculato* shall not entail loss of franchise. In other words, he believes that not the act of embezzlement, but the fact of condemnation is the cause of the loss of the right. This is patently untenable, however; the act may be badly worded, but the act of continuation is used elliptically, in order to prepare the way for rehabilitation by pardon.